



COMPREHENSIVE EMPLOYMENT SOLUTION

MANAGER MANUAL 2024 EDITION

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EMPLOYMENT SOLUTION

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INTRODUCTION TO MANUAL

VOLUME 2:

In Volume 2 we will be discussing new topics that can help keep your company compliant. CES strives to provide you with the most current and most often discussed topics in HR. These manuals are developed to help owners and managers navigate common HR issues and have tools to refer to when making decisions.

With CES HR behind you, you will have comfort knowing that you are compliant and are making the best decisions for your business and for your state required employment laws.

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AT WILL EMPLOYMENT AND PROBATION PERIODS

Recruitment and Hiring is one of the most expensive parts of your business. Hiring and retaining the best fit for your company is crucial. When deciding if an employee will be a valuable investment, the first few months can be crucial. At Will Employment and Probation periods, when handled correctly, can be vital tools in insuring that you are keeping the right employees with the company long term.

AT WILL-EMPLOYMENT & PROBATION PERIODS

AT WILL-EMPLOYMENT:

At will employment simply means there is no contractual agreement between you and the employee. Employees have free will to leave and employers have free will to terminate. However, this does not mean that an employer has the right to terminate without cause.

The ole' "not a good fit" will not suffice, it will actually open you up to a lot of liability. Typically, unemployment will not pay out to an employee who has been terminated for cause. If there is no cause then employees are almost guaranteed to receive unemployment benefits, which costs you money. This could also open up a wrongful termination or discrimination case. Court fees, potential lawyer fees, and the cost of your time adds up, it's not worth it.

PROBATION PERIODS:

Probation periods are typically a 90-day period where employees are not eligible for company provided benefits. It is a vital time to vet employees to see if their skill set is up to company standards, if they fit company culture, and if you feel they will be a good investment for your company. It is the responsibility of the company to document and discuss with the employee if they are not adhering to the expectations set forth in their offer letter. Probation periods are not a time to fire anyone for any reason because they are "still in probationary period." Again, you need cause for termination.

When you terminate an employee, you need to always have a performance based or skill-based reason to keep your company safe. Refer to CES Manager Manual Volume 1 to learn about how the disciplinary process can help you track this.

HOW TO ENSURE THAT YOU ARE TERMINATING CORRECTLY:

- -Provide clear job descriptions
- -Discuss job performance issues in the moment
 - -Document all discussions
- -Follow the disciplinary action process: Verbal Warning, Written Warning, Termination

“MY EMPLOYEE JUST ISN’T A GOOD FIT, HE IS STILL IN HIS PROBATIONARY PERIOD/ WE ARE AN AT-WILL EMPLOYER, I CAN JUST FIRE HIM RIGHT?”

What work related issues do they have?

- Skills don't match resume
- They are consistently late
- Aren't efficient
- Customer complaints

None. We just don't like them

You cannot terminate an employee just because you don't like them. You are opening up wrongful terminate lawsuit.

Have you spoken to them about this?

YES

Make sure that conversation is documented.
Proceed with finawarning or termination.

NO

You need to discuss the issues with the employee and give them a chance to improve.
Document.

PAY AGREEMENTS & OFFER LETTERS

When hiring new employees, it is important to set them up for success. Clear expectations regarding the skills and duties of their jobs as well as how they will be paid will lay the foundation for a successful working relationship. Pay agreements will take the guesswork out of how and when they will be paid, and an Offer Letter will list out what you expect from them in their daily work life.

PAY AGREEMENTS & OFFER LETTERS

PAY AGREEMENTS:

Pay Agreements will set you and your employee up for success and lay out clear expectations. Pay agreements should include their hourly or salary pay and any commission/spiff/bonus' that can be earned.

Commission/Spiffs/Bonus'- When creating a pay agreement where employees have the opportunity to earn additional income there are certain requirements you need to add to ensure compliance and clarity.

All pay agreements should include a clear breakdown of:

- HOW they earn this additional income. Employers should have either a formula or breakdown of how exactly they can earn. What are the expectations of the job? If work isn't complete or there is a call back, will it deduct this additional income?
 - WHAT exactly they earn, whether it's per job, per profit percentage, per efficiency rate etc.
 - WHEN will they see this payout? Per pay period or monthly?
 - TERMINATION/RESIGNATION- What happens if they leave the company? Will pending commissions be paid out or forfeited?

These pay agreements should be discussed one on one with your new employee and should be signed off on and put in their employee file.



PAY AGREEMENTS

Pay Agreements will set you and your employee up for success and clear expectations. Pay agreements should include their hourly or salary pay and any commission/spiff/bonus' that can be earned. If an employee is commissioned only, you still need to ensure that they are paid at least minimum wage for all hours worked (or a base pay that exceeds minimum wage) and that each employee is tracking hours for the purpose of Overtime Premiums.

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WHEN will they see this payout? Per pay period or monthly?

TERMINATION/RESIGNATION- What happens if they leave the company? Will pending commissions be paid out or forfeited?

These pay agreements should be discussed one on one with your new employee and should be signed off on and put in their employee file.

OFFER LETTERS:

Offer letters are given prior to officially being hired. These letters typically have some room for negotiation. If performing a pre-employment drug test or background check, offer letters **MUST** be given to a candidate **PRIOR** to performing these checks. Their offer letter should state “contingent upon results of background/drug test.”

Offer letters should include:

- Their anticipated start date
- Their manager or supervisor
 - Their schedule
- Their salary or hourly pay and any bonus incentives. You can attach your pay agreement for clarity.
- Any benefits they will be eligible for and when they are eligible.

Offer letters should be signed by the manager and employee and put in their personnel file.

SALARY VS HOURLY

It is crucial to understand different pay groups and who qualifies for them. Classifying an employee incorrectly will cost you money. If an employee is paid incorrectly or not classified properly, the Department of Labor can (and will) charge you fines and back wages to that employee. This could also open a company-wide case to investigate if others haven't been properly paid. Make sure you reach out to your CES HR rep to ensure that your employees are classified correctly.

UNDERSTANDING SALARY EXEMPT VS HOURLY

SALARY EXEMPT

Salaried Exempt employees have mandatory federal criteria that must be met to be considered Salaried Exempt. Salaried means they are entitled to a yearly salary no matter how many hours they work. Exempt means they are exempt from overtime. If the employee doesn't meet the criteria they cannot, by law, be considered a salaried exempt employee and therefore should be hourly with the ability to earn overtime.

Salaried employees do not track time and aren't not paid on an hour by hour basis. If you feel that your employee isn't working enough to justify the salary, or are not taking the time needed to complete the job, then those hours can be used as a way to evaluate if its time to move that employee to an hourly rate. Salaried employees are entitled to a full days pay even if all they do is answer a call that day.

The only time you can deduct from a salaried employee would be if they have exhausted all their PTO/Vacation/or Sick time. They cannot complete any work during their time off. This can be sticky because salaried exempt employees are guaranteed a yearly salary, so if unpaid time off is too frequent, they by law, will no longer qualify for the status.

HOURLY

Hourly employees are paid an hourly rate for all time spent working. Hourly employees are entitled to overtime, which varies by state.

***Note:** The Department of Labor revised the regulations located at 29 C.F.R. part 541 with an effective date of January 1, 2020. The 2004 part 541 regulations will remain in effect through December 31, 2019, including the \$455 per week standard salary level and \$100,000 annual compensation level for Highly Compensated Employees. The final rule is available at: <https://www.federalregister.gov/documents/2019/09/27/2019-20353/defining-and-delimiting-the-exemptions-for-executive-administrative-professional-outside-sales-and>.

U.S. Department of Labor
Wage and Hour Division



Fact Sheet #17A: Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information on the exemption from minimum wage and overtime pay provided by Section 13(a)(1) of the FLSA as defined by Regulations, [29 C.F.R. Part 541](#).

The [FLSA](#) requires that most employees in the United States be paid at least the [federal minimum wage](#) for all hours worked and [overtime pay](#) at not less than time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek.

However, Section 13(a)(1) of the FLSA provides an exemption from both [minimum wage](#) and [overtime pay](#) for employees employed as bona fide executive, administrative, professional and outside sales employees. Section 13(a)(1) and Section 13(a)(17) also exempt certain computer employees. To qualify for exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis at not less than \$684* per week. Employers may use nondiscretionary bonuses and incentive payments (including commissions) paid on an annual or more frequent basis, to satisfy up to 10 percent of the standard salary level. Job titles do not determine exempt status. In order for an exemption to apply, an employee's specific job duties and salary must meet all the requirements of the Department's regulations.

See other fact sheets in this series for more information on the exemptions for [executive](#), [administrative](#), [professional](#), [computer](#) and [outside sales](#) employees, and for more information on the [salary basis](#) requirement.

Executive Exemption

To qualify for the executive employee exemption, all of the following tests must be met:

- The employee must be compensated on a [salary basis](#) (as defined in the regulations) at a rate not less than \$684* per week;
- The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and
- The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

Administrative Exemptions

To qualify for the administrative employee exemption, all of the following tests must be met:

- The employee must be compensated on a [salary](#) or fee basis (as defined in the regulations) at a rate not less than \$684* per week;
- The employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and
- The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

Professional Exemption

To qualify for the **learned professional** employee exemption, all of the following tests must be met:

- The employee must be compensated on a [salary](#) or fee basis (as defined in the regulations) at a rate not less than \$684* per week;
- The employee's primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;
- The advanced knowledge must be in a field of science or learning; and
- The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

To qualify for the **creative professional** employee exemption, all of the following tests must be met:

- The employee must be compensated on a [salary](#) or fee basis (as defined in the regulations) at a rate not less than \$684* per week;
- The employee's primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

Computer Employee Exemption

To qualify for the computer employee exemption, the following tests must be met:

- The employee must be compensated **either** on a [salary](#) or fee basis (as defined in the regulations) at a rate not less than \$684* per week **or**, if compensated on an hourly basis, at a rate not less than \$27.63 an hour;
- The employee must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below;
- The employee's primary duty must consist of:
 - 1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;

- 2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
- 3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
- 4) A combination of the aforementioned duties, the performance of which requires the same level of skills.

Outside Sales Exemption

To qualify for the outside sales employee exemption, all of the following tests must be met:

- The employee's primary duty must be making sales (as defined in the FLSA), or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and
- The employee must be customarily and regularly engaged away from the employer's place or places of business.

Highly Compensated Employees

Highly compensated employees performing office or non-manual work and paid total annual compensation of \$107,432 or more (which must include at least \$684* per week paid on a salary or fee basis) are exempt from the FLSA if they customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee identified in the standard tests for exemption.

Blue-Collar Workers

The exemptions provided by FLSA Section 13(a)(1) apply only to "white-collar" employees who meet the salary and duties tests set forth in the Part 541 regulations. The exemptions do not apply to manual laborers or other "blue-collar" workers who perform work involving repetitive operations with their hands, physical skill and energy. FLSA-covered, non-management employees in production, maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers and laborers are entitled to [minimum wage](#) and [overtime](#) premium pay under the FLSA, and are not exempt under the Part 541 regulations no matter how highly paid they might be.

Police, Fire Fighters, Paramedics & Other First Responders

The exemptions also do not apply to police officers, detectives, deputy sheriffs, state troopers, highway patrol officers, investigators, inspectors, correctional officers, parole or probation officers, park rangers, fire fighters, paramedics, emergency medical technicians, ambulance personnel, rescue workers, hazardous materials workers and similar employees, regardless of rank or pay level, who perform work such as preventing, controlling or extinguishing fires of any type; rescuing fire, crime or accident victims; preventing or detecting crimes; conducting investigations or inspections for violations of law; performing surveillance; pursuing, restraining and apprehending suspects; detaining or supervising suspected and convicted criminals, including those on probation or parole; interviewing witnesses; interrogating and fingerprinting suspects; preparing investigative reports; or other similar work.

Other Laws & Collective Bargaining Agreements

The FLSA provides minimum standards that may be exceeded, but cannot be waived or reduced. Employers must comply, for example, with any Federal, State or municipal laws, regulations or ordinances establishing a higher minimum wage or lower maximum workweek than those established under the FLSA. Similarly, employers may, on their own initiative or under a collective bargaining agreement, provide a higher wage, shorter workweek, or higher overtime premium than provided under the FLSA. While collective bargaining agreements cannot waive or reduce FLSA protections, nothing in the FLSA or the Part 541 regulation relieves employers from their contractual obligations under such bargaining agreements.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website:

<http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

When state law differs from the federal FLSA, an employer must comply with the standard most protective to employees. Links to your state labor department can be found at www.dol.gov/whd/contacts/state_of.htm.

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

U.S. Department of Labor
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200 Constitution Avenue, NW
Washington, DC 20210

1-866-4-USWAGE
TTY: 1-866-487-9243
[Contact Us](#)

STAY INTERVIEWS

Employers mostly wait until an employee is unhappy and leaves before, they ask, “what could we have done differently.” Why not ask what are we doing right and what can we change, now? This will allow you to retain those top employees and ensure that they are happy to be working for your company. You spend a lot of money providing benefits that set you apart from other companies, but is it what they truly want? The best thing to do is, just ask!

STAY INTERVIEWS

One of the most effective ways to retain your employees is to simply ask why they stay. Stay interviews can prove to be powerful tools to retain key employees while attracting talented candidates.

Opening the Interview- "I'd like to talk with you about the reason you stay with (Company Name) so I can understand what I might be able to do to make this a great place to work."

SAMPLE STAY INTERVIEW

(You can always send out a survey as well)

What do you look forward to when coming to work?

What are you passionate about?

If you could change something about your job, what would it be?

Why do you stay?

What might tempt you to leave?

What motivates you?

How do you like to be recognized?

Closing the Interview- "I appreciate you sharing your thoughts with me today, I am committed to continue making this a great place for you to work!"

BACKGROUND CHECKS

Background checks are vital for customer facing positions. Knowing your employee's criminal history can prevent liability. When conducting background checks you must first be prepared with criteria and ensure you are gathering this information in a legal way.

BACKGROUND CHECKS

Background Checks cannot be conducted without first providing the candidate with a contingent job offer. Make sure you have all the proper release paperwork from whichever background check company you choose. Employees need to be aware and must approve of you conducting a background check.

Ensure that before you implement background checks that you have an internal document that you use when making your decision. You should never decide based on case by case. Each department should have a list of what you will and won't accept (there may be some rules depending on your state).

For example, if you are hiring an accountant, it would be good to bypass anyone who has fraud or theft on their background check. (remember, these must be CONVICTIONS not just charges). This list would stay INTERNAL.

If you decide to rescind a job offer because of the outcome of their background check, you must send the candidate a pre-adverse letter with a copy of their background check as well as a copy of the "Summary of Rights under the FCRA" form.

You must then allow for a "reasonable" waiting period (around 5 business days) for the candidate to dispute anything found on the background check. If the candidate doesn't submit a dispute, then you must send out an official Adverse Action notice. This will include providing the candidate with the contact information for the company that has processed the background check for you.

STEPS WHEN PERFORMING A BACKGROUND CHECK

Have you offered them a contingent job?

Yes. We sent them an offer letter informing them the job is contingent until background check. They signed.

No, we don't know if we want to hire them.

Submit background check.

You first need to give the employee a contingent job offer, fill out the background check release, and then you can run a check.

BACKGROUND CHECK HAS COME BACK, NOW WHAT?

Do they meet your documented criteria?

Ready to fully hire

Notify employee of Adverse Action-attach copy of background check-by mail. Inform them of their rights to dispute, otherwise their offer is rescinded.

Employee has right to dispute in writing, wait at least 7 days.

If employee doesn't dispute then rescinded offer stands.